BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	
Opinion requested by Mr. John Carson Nilsson, Robbins, Bissell, Dalgarn and Berliner	No. 75-031 July 2, 1975

BY THE COMMISSION: We have been asked the following questions by M. John Carson of Nilsson, Robbins, Bissell, Dalgarn and Berliner.

Members of the law firm are engaged in the practice of trademark law. In the course of this legal practice, they have occasion to make application to the Trademarks Division of the California Secretary of State's Office in order to obtain trademark registration for clients. Occasionally, this entails contact by telephone or letter with various staff members in the Trademark Division concerning trademark applications, registerability of trademarks, and other matters.

Are members of this firm classified as lobbyists under the Political Reform Act? Are they engaged in influencing quasi-legislative administrative action?

CONCLUSION

The contacts between this firm and the Trademarks Division of the California Secretary of State's Office do not constitute attempting to influence quasi-legislative administrative action.

ANALYSIS

Any person employed to communicate with officials for the purpose of influencing legislative or administrative action is required to register if he falls within the statutory definition of the term "lobbyist". Government Code Sections 82039 and 86100.[1/]

1/ All statutory references are to the Government Code unless otherwise noted.

Mr. Carson asks whether the members of his firm are attempting to influence "administrative action" when they register trademarks with the Secretary of State. "Administrative action" is defined as:

> ... the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding, ...
>
> Section 82002.

The registration of a trademark by the Secretary of State's Office is certainly not a rate-making proceeding, nor do we believe such an action is a quasi-legislative proceeding.

The term "quasi-legislative" was discussed in Hubbs v. California Department of Public Works, 36 C.A.3d 1005 (1974):

> The term "quasi" used as a prefix means "analogous to" (Black's Law Dictionary (4th ed.); or as "having some resemblance (as in function, effect or status to a given thing)" (Webster's Third New International Dictionary). Webster defines the term "quasi-legislative" as
>
> > having a partly legislative character by possession of the right to make rules and regulations having the force of law
>
> and as:
>
> > essentially legislative in character, but not within the legislative power or function of belonging to the legislative branch of government as constitutionally defined. (Webster's Third New International Dictionary)
>
> Generally, acts constituting a declaration of public purpose and making provisions for ways and means of its accomplishment are classified as calling for the exercise of legislative power.

The activities of the Trademarks Division of the California Secretary of State's Office do not involve a "declaration of

public purpose and making provisions for ways and means of its accomplishment." The Division performs the administrative duty of determining whether a trademark is registerable. A trademark may not be registered if it is confusingly similar to another trademark or in other ways does not qualify under established standards. Mr. Carson's firm may present arguments as to why it is within the law in the same way arguments are made to a court.

> A legislative act is said to be one which predetermines what the law shall be for the regulation of future cases falling under its provisions, while a judicial act is a determination of what the law is in relation to some existing thing done or happened.
>
> Wulzen v. Board of Supervisors, 101 Cal. 14 at 24 (1894)

The decision made by the Trademarks Division is a quasi-judicial act in determining how the law applies to the facts before it.

> The distinction between a judicial and a legislative act was pointed out by Field, J., in Sinking-Fund Cases, 99 U.S. 727, 761 [25 L.Ed. 504], as follows: "The one determines what the law is, what the rights of the parties are with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it."
>
> Nider v. City Commission, 36 C.A.2d, 14 (1939)

> The judicial function is to decide on the property or rights of the citizen.
>
> Suckow v. Alderson, 182 Cal. 247, 250 (1920)

> With some exceptions the judicial function is to find facts and apply rules of law thereto for the purpose of settling a dispute or contest between parties concerning their rights.
>
> City of Los Angeles v. South Gate, 108 C.A. 398, 401 (1930)

The functions of the Trademarks Division are to find the facts with respect to existing trademarks and applications for new trademarks and to apply the rules of law to these facts for the purpose of determining the rights between the parties.

This function is judicial in nature and thus is not quasi-legislative. Therefore, members of a law firm representing their clients in these matters are not required to register as lobbyists under the Act.

Approved by the Commission on July 2, 1975. Concurring: Brosnahan, Carpenter, Lowenstein, Miller. Commissioner Waters was absent.

Daniel H. Lowenstein
Chairman